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CHE MAN CHE MUD v. MAJLIS PEGUAM MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
NOORIN BADARUDDIN J
[ORIGINATING SUMMONS NO: WA-17D-25-11-2020]
7 NOVEMBER 2021

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Abstract – *It is within the legitimate right of an advocate and solicitor who has applied to be restored to the Roll to file a claim against the Bar for alleged mala fide act and loss of opportunity to earn a living as an advocate and solicitor. Merely exercising such right does not equate to the advocate showing no repentance, remorse or penitence as would bar him from coming back to practice his trade. The applicant here has taken care of his personal behaviour and conduct in society for more than 32 years since his striking off; he is thus a fit and proper person to be re-admitted to the Roll.*

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LEGAL PROFESSION: *Roll of Advocates and Solicitors – Restoration on Roll – Application for – Fair and reasonable test – Whether applicant truly penitent and made restitution – Whether fit and proper person to resume practice at Bar – Legal Profession Act 1976, s. 107*

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This was the plaintiff's application for his name to be restored to the Roll of Advocates and Solicitors pursuant to s. 107 of the Legal Profession Act 1976 ('LPA'). In 1985, the plaintiff set up a sole proprietorship under the name and style of Messrs Che Man & Partners. He was in possession of his last Annual Practising Certificate for the year 1988. *Vide* letter dated 31 March 1987, a complaint ('complaint 1') was made to the Kelantan Bar Committee ('KBC') by the complainant, acting on behalf of a bank. According to the said letter, the plaintiff, through his firm, was alleged to have received a sum of RM34,392 ('said sum') from the bank and that the sum was to be held by the plaintiff subject to an express undertaking not to part with the said sum until the plaintiff's client had obtained a discharge and indemnity. On 10 May 1987, KBC sought an explanation from the plaintiff to furnish proof that monies were maintained in this client's account during the material period. In the KBC's undated report, it was stated that the plaintiff failed to render a satisfactory explanation. On 27 December 1988, KBC lodged another complaint to the Bar Council that the plaintiff had absconded ('complaint 2') and urged the Bar Council to proceed immediately under s. 88 of the LPA. Based on complaints 1 and 2, Bar Council filed an application under s. 88A of the LPA to the High Court and the plaintiff was suspended from practice *vide* order of the High Court ('interim suspension order'). On 1 July 2010, the Bar Council lodged a complaint against the plaintiff pursuant to s. 88A(7) of the LPA. Subsequently, the plaintiff was

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struck off the Roll *vide* order of the Disciplinary Board dated 23 June 2011. On 4 May 2017, the plaintiff filed a suit against the Bar Council Disciplinary Board and two members of the Disciplinary Committee ('2017 suit') claiming, *inter alia* (i) against the Bar Council for loss of opportunity to earn a living as an advocate and solicitor from 1990 to 2010 for an amount of RM3.6 million; and (ii) against the Bar Council, the Disciplinary Board and two members of the Disciplinary Committee for loss of opportunity to earn a living as an advocate and solicitor from 2011 to 2017 for an amount of RM4.2 million and general and punitive damages caused by stress, embarrassment and loss of reputation for an amount of RM3 million. The 2017 suit was allowed by the Court of Appeal and the Bar Council's application for leave to appeal was dismissed by the Federal Court. It was the Bar Council's position that it was not fair and reasonable for the plaintiff to be restored to the Roll as, *inter alia* (i) the plaintiff was not truly penitent and this could be gleaned from the fact that he had filed the 2017 suit against them; and (ii) there was insufficient evidence to show that there had been a change in the plaintiff's character as to make him a fit and proper person to resume practice at the Bar. The plaintiff, however, submitted that he was remorseful and that he would never commit the same mistakes if he was allowed to be in practice again. The plaintiff further stated that he had been working as a legal practitioner as reflected by the fact that he had been practising at the Arbitration Centre in Kuala Lumpur for years without any complaint levelled against him and that he had also represented himself in the 2017 suit all the way to the Federal Court.

Held (allowing plaintiff's application):

(1) The test under s. 107(1) of the LPA is whether in considering the circumstances of the case, it is fair and reasonable that the plaintiff be restored to the Roll of Advocates and Solicitors of the High Court of Malaya. The onus was on the plaintiff to show that (i) there had been such a change in his character as to make him a fit and proper person to resume practice at the Bar; (ii) he is truly penitent; and (iii) he has made restitution. (paras 22 & 24)

(2) The 2017 suit could not be taken as a fact or proof or indication that the plaintiff had no remorse and had not repented. There were no reported cases where the courts had held that a solicitor who appealed against the decision of the Disciplinary Board was considered to be without remorse. The 2017 suit was a matter of last resort for the plaintiff to seek justice from the court. (para 33)

(3) Repentant and remorse could not be objectively measured. No direct evidence was necessary to be adduced to prove remorsefulness or penitence as they could be clearly inferred from the circumstances, specifically from the averments deposed to by the plaintiff in his

affidavits. This court also had the advantage of seeing and hearing the plaintiff himself. The plaintiff had suffered the punishment. The gravity of regret and shame could clearly be seen in him. (para 34)

(4) Repentance and remorse had no relationship with the action taken by the plaintiff in the 2017 suit. An appeal against the decision of the Disciplinary Board is a right given by the law to the aggrieved advocate and solicitor against the order made by the Disciplinary Board. The plaintiff could not be punished for exercising such rights made available under the law. (para 38)

(5) It was sufficient for the plaintiff to be seen as committed to a personal change and resolved to live a more responsible and humane life. He had accepted the punishment and had dismantled his legal practice wilfully. In addition, the plaintiff had suffered financial loss and shame for 32 years. During the long lapse of time, he had led a blameless life since his suspension in 1989 until now. (para 39)

(6) The complaint 1 lodged by the complainant had been resolved in that the plaintiff had issued the receipt to the complainant. The complainant for that matter did not proceed any further with their complaint. There was no question of restitution as the plaintiff did not misappropriate the complainant's money and no report had been lodged as to that effect. The complainant's letter dated 31 March 1987 to the KBC related only to the plaintiff's delay in responding/replying to their letter relating to the amicable settlement between the complainant's client, *ie,* the bank and the plaintiff's client. (para 41)

(7) The plaintiff had taken care of his personal behaviour and conduct in society with no criminal or civil charges or claims brought against him during the period despite the difficulties in life that he had to undergo due to his inability to practice the profession of his choice. It could hardly be said that a man of 67 years old was not remorseful for his misdeeds. After 32 years of being punished, the plaintiff could not be expected to wait another ten or 20 more years to undergo 'rehabilitation' to be considered as a fit and proper person to practice law. 32 years were more than sufficient to rehabilitate a person who had failed to issue an official receipt. (para 42)

(8) The plaintiff had demonstrated that he was still very much in touch with the law. He was very able in arguing his case before this court and had applied the law correctly. Taking into account that the plaintiff had been practising at the KLRCA without any complaint from his clients and the fact that he had represented himself all the way to the Federal Court in the 2017 suit, the plaintiff was a fit and proper person to be re-admitted to the Roll and to be able to practice again. It was thus fair and reasonable to re-admit and restore the plaintiff to the Roll of Advocates and Solicitors pursuant to s. 107 of the LPA. (paras 48, 50 & 51)

Case(s) referred to:
Chan Chow Wang v. Malaysian Bar [1986] 1 LNS 94 HC ***(refd)***
Dharshan Singh Atma Singh v. Majlis Peguam Malaysia [2015] 4 CLJ 1083 HC ***(refd)***
Khong Jin Teong v. Majlis Peguam Malaysia [2015] 2 CLJ 1109 HC ***(refd)***
Patrick Samuel Joseph Sebastian v. Majlis Peguam Malaysia [2013] 1 LNS 1170 HC ***(refd)***
Teoh Hooi Leong v. Bar Council, Malaysia [1991] 1 LNS 73 SC ***(refd)***
Thavananthan Balasubramaniam v. Majlis Peguam Malaysia [2009] 6 CLJ 217 FC ***(refd)***

Legislation referred to:
Legal Profession Act 1976, ss. 38, 88A(7), 94(3)(c), (d), (o), 99, 107(1), (3)
Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 (repealed), r. 8

For the appellant - In person
For the respondent - Heng Yee Keat & Joseph Khor; M/s Christopher & Lee Ong

Reported by Suhainah Wahiduddin

JUDGMENT

Noorin Badaruddin J:

[1] This is the plaintiff's application for his name to be restored to the Roll of Advocates and Solicitors pursuant to s. 107 of the Legal Profession Act 1976 ("LPA").

Background

[2] The plaintiff read law at the University of Malaya and subsequently joined the judicial and legal service prior to being called to the Bar on 3 September 1981. Thereafter, he practised law as a partner at Messrs Ghani Mohd & Che Man. The plaintiff then set up a sole proprietorship under the name and style of Messrs Che Man & Partners in 1985. He was in possession of his last Annual Practising Certificate for the year 1988.

[3] On 1 July 2010 the Bar Council lodged a complaint against the plaintiff to the Disciplinary Board. The plaintiff was subsequently struck off the Roll on 23 June 2011.

The Complaint

[4] The complaint against the plaintiff is apparent from the Bar Council's report which is placed before this court under s. 107(3) LPA.

[5] *Vide* letter dated 31 March 1987, a complaint ("complaint 1") was made to the Kelantan Bar Committee ("KBC") by Messrs Jackson Masacorale (the "complainant") acting on behalf of Hongkong & Shanghai Banking Corporation (the "bank"). According to the said letter, the plaintiff through his firm, Messrs Che Man & Partners was alleged to have received

A a sum of RM34,392 (the "said sum") from the bank and that the sum was to be held by the plaintiff subject to an express undertaking not to part with the said sum until the plaintiff's client had obtained a discharge and indemnity.

B **[6]** On 10 May 1987, KBC sought an explanation from the plaintiff to furnish proof that monies were maintained in his client's account during the material period. In the KBC's undated report, it was stated that the plaintiff failed to render a satisfactory explanation.

C **[7]** KBC lodged another complaint on 27 December 1988 to the Bar Council that the plaintiff had absconded ("complaint 2") and urged the Bar Council to proceed immediately under s. 88A LPA. Further, KBC informed Bar Council that the Disciplinary Committee appointed for complaint 1 was unable to proceed with its investigation due to the absence of the plaintiff.

D **[8]** Based on complaints 1 and 2, Bar Council filed an application under s. 88A LPA to the Kuala Lumpur High Court and the plaintiff was suspended from practice *vide* order of the High Court dated 16 October 1989 ("interim suspension order").

[9] On 12 March 2010, the plaintiff applied to set aside the interim suspension order and on 4 March 2011, the plaintiff's application was
E allowed.

[10] On 1 July 2010, the Bar Council lodged a complaint against the plaintiff pursuant to s. 88A(7) LPA. Subsequently, the plaintiff was struck off the Roll *vide* order of the Disciplinary Board dated 23 June 2011.

F **[11]** The plaintiff did not file any appeal against the order of the Disciplinary Board dated 23 June 2011 striking his name off the Roll.

[12] This is in fact the plaintiff's second bid for reinstatement to the Roll. In 2016, the plaintiff filed an application for reinstatement but later withdrew his application with liberty to file afresh after the Bar Council disclosed to
G the court that he was an undischarged bankrupt at the material time.

[13] On 4 May 2017, the plaintiff filed a suit against the Bar Council, Disciplinary Board and two members of the Disciplinary Committee (the "2017 suit") claiming *inter alia*:

H (i) against the Bar Council for loss of opportunity to earn a living as an advocate and solicitor from 1990 to 2010 for an amount of RM3.6 million; and

(ii) against the Bar Council, the Disciplinary Board and two members of the Disciplinary Committee for loss of opportunity to earn a living as an
I advocate and solicitor from 2011 to 2017 for an amount of RM4.2 million and general and punitive damages caused by stress, embarrassment and loss of reputation for an amount of RM3 million.

[14] On 11 December 2017, the High Court ordered that the 2017 suit be struck out. Dissatisfied, the plaintiff appealed to the Court of Appeal and the same was allowed on 24 June 2019. Thereafter, the Bar Council filed an application for leave to appeal to the Federal Court and the same was dismissed on 6 January 2021.

Findings And Recommendations Of The Disciplinary Committee

[15] The Disciplinary Committee found that the plaintiff had failed:

(i) to acknowledge receipt of the said sum received from the complainant acting for the bank until 4 1/2 months later and after the matter was reported to the KBC;

(ii) to provide satisfactory explanation to the KBC for his delay of 4 1/2 months in acknowledging the receipt of the said sum;

(iii) to provide evidence to the KBC that the said sum remitted to him by the complainant was kept in a clients' account until payment was made out for the duration; and

(iv) to attend his office for more than three months.

[16] The Disciplinary Committee found the applicant guilty of grave misconduct under s. 94(3)(c), (d) and (o) LPA and unanimously recommended that the plaintiff be struck off the Roll.

Summary Of The Bar Council's Submissions/View

[17] It is the Bar Council's position that it is not fair and reasonable for the plaintiff to be restored to the Roll for the following reasons:

(i) the plaintiff is not truly penitent and this can be gleaned from the fact that he had filed the 2017 suit against them; and

(ii) there is insufficient evidence to show that there has been a change in the plaintiff's character as to make him a fit and proper person to resume practice at the Bar.

Summary Of The Plaintiff's Contentions

[18] Summarily, the plaintiff states that he is remorseful, penitent and promised that he will never commit the same mistakes if he is allowed to be in practice again. According to the plaintiff he had been struck off from the Roll for a long period of time and ought not to be punished longer for his failure to acknowledge receipt of the said sum received from the complainant acting for the bank until 414 months later.

[19] According to the plaintiff, the 2017 suit was filed on the grounds of tort as there was *mala fide* on the part of the Bar Council in lodging a new complaint against him when the first complaint was found to be out of time

A and void by virtue of s. 99 LPA. As a person who suffers damages by such action, the plaintiff states that he has the right to claim for damages against the *mala fide* act of the Bar Council and such act should not be construed as a challenge to the Disciplinary Board's decision.

B **[20]** The plaintiff pleaded that he had managed to pull himself out of his financial difficulties and took responsibility to settle his debts to his creditors.

[21] The plaintiff further states that he is not out of touch with the law and able to work as a legal practitioner as reflected by the fact that he had been practising at the Arbitration Centre in Kuala Lumpur for years without any C complaint levelled against him and that he had also represented himself in the 2017 suit all the way to the Federal Court.

Findings

The Law

D **[22]** The test under s. 107(1) LPA is whether in considering the circumstances of the case, it is fair and reasonable that the plaintiff be restored to the Roll of Advocates and Solicitors of the High Court of Malaya (see *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* [2009] 6 CLJ 217; [2010] 3 MLJ 316). The Federal Court through the judgment of Zulkefli E Makinudin FCJ (as he then was) had cited the case of *Teoh Hooi Leong v. Bar Council, Malaysia* [1991] 1 LNS 73; [1991] 2 MLJ 190 where the Supreme Court had stated that the word 'fair' must necessarily mean that the decision must be fair to the members of the public, to court and last but not least to the advocate and solicitor concerned. To be reasonable, the Supreme Court F further stated that the decision must be based on reasonable grounds and be supported by cogent evidence and not one based on conjecture or speculation.

[23] It is apposite to note that in *Teoh Hooi Leong* (*supra*), Hashim Yeop A Sani CJ (Malaya) (as he then was) further stated that:

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> The court should not however forget that once removed from the Roll it must not be construed that the door is shut forever to the lawyer. A conviction should not be regarded in every case as a permanent unfitness. Disbarment is not necessarily intended to be permanent but that a heavy burden lay upon an applicant to show that he is now a fit and proper H person to have his name restored to the Roll.

[24] The onus is therefore on the plaintiff to show that:

(i) there has been such a change in his character as to make him a fit and proper person to resume practice at the Bar;

I (ii) he is truly penitent; and

(iii) he has made restitution.

(see *Chan Chow Wang v. Malaysian Bar* [1986] 1 LNS 94; [1986] 2 MLJ 159).

[25] It is also clear that the court must consider the view of the Bar Council. A

[26] Foremost, in this instant matter, the plaintiff has been struck off from the Roll for nine years and 11 months. If one were to take into consideration his suspension since 16 January 1989, the plaintiff has in fact been barred from practising for 32 years. B

[27] The crux of the Bar Council's objection against the present application is premised on the 2017 suit, it is contended that the 2017 suit clearly shows that the plaintiff is not remorseful nor penitent at all and as such he is argued to be not a fit and proper person to have his name restored to the Roll. According to the Bar Council, there is insufficient evidence to show that there has been a change in the plaintiff's character as to make him a fit and proper person to resume practice at the Bar. C

[28] The plaintiff on the other hand has offered his explanation as to his position in regard to the 2017 suit. He explained that when he obtained a copy of the order for striking off from the Disciplinary Board on 19 October 2016, he did not immediately take a legal action against the Bar Council. D

[29] The first step he took was to apply for restoration under s. 107 LPA which was filed on 29 October 2016. However, upon objection by the Bar Council on the ground that he was then an undischarged bankrupt, he withdrew the motion with liberty to file afresh. According to the plaintiff, he was then left with no other choice but to take a civil action as the facts showing malicious prosecution is clear to him. He filed civil action on 4 May 2017 as the claim would be barred by limitation by 23 June 2017 and if he did not file the civil action he would lose all recourse for justice. The plaintiff explained that this is more so when the Bar Council by its conduct indicated that it will oppose an application for restoration in any event. E F

[30] On 5 October 2020 he then again filed an application for restoration. This is due to the fact that in the 2017 suit the High Court cannot make an order for restoration. G

[31] The plaintiff has attached the letter of offer to the Bar Council where he stated that he is willing to withdraw the 2017 suit against the Bar Council if it agrees to support the present application and in good faith issue the Annual Practising Certificate to him. The plaintiff had made this offer since September 2020 and again on 19 April 2021. H

[32] The plaintiff has submitted that he has accepted the punishment of striking off without question. He served the punishment of striking off which is now already nine years and nine months. He did not appeal against the order of the Disciplinary Board and having suffered the punishment, he deeply regrets the misdeed that he had committed as decided by the Disciplinary Committee and Disciplinary Board. I

[33] This court is of the considered view that the 2017 suit cannot be taken as a fact or proof or indication that the plaintiff has no remorse and has not repented. There are no reported cases where the courts had held that a solicitor who appealed against the decision of the Disciplinary Board is considered to be without remorse. It is of the considered view that the 2017 suit was a matter of last resort for the plaintiff to seek justice from the court.

[34] Repentance and remorse cannot be objectively measured. No direct evidence is necessary to be adduced to prove remorsefulness or penitence as they can be clearly inferred from the circumstances, specifically from the averments deposed to by the plaintiff in his affidavits. This court has also the advantage of seeing and hearing the plaintiff himself in court as he stood before this court conducting the present matter. Apart from the averments in his affidavits, this court observed and finds that the plaintiff has suffered the punishment. The gravity of regret and shame can clearly be seen in him. In *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* (*supra*), the Federal Court stated:

> (6) The appellant need not go as far as to categorically express in writing or in his affidavit that he was repentant and would maintain the integrity and the standards expected of him as a legal practitioner. The fact that the appellant had filed his application to be restored to the Roll which was supported by the various letters of recommendation and testimonial by senior members of the Bar and the judiciary were more than sufficient to show that the appellant is now fit and proper person.

[35] In the case of *Dharshan Singh Atma Singh v. Majlis Peguam Malaysia* [2015] 4 CLJ 1083, Gunalan Muniandy JC (as His Lordship then was) stated as follows:

> [13] As for remorsefulness or penitence, this can be clearly inferred from the circumstances, specifically the averments deposed to by the applicant in both his affidavits. It is a state of mind for which no direct evidence would be necessary ...

[36] The plaintiff repeatedly states that he regrets very much of his failure to issue an official receipt to the complainant leading to the striking off. He further states that at the age of 67 and having learnt his lesson from the punishment imposed upon him, he will surely be more careful in executing his role as an advocate and solicitor. He further submits that at his age, he will not do any act that will tarnish the good name of the legal profession.

[37] The plaintiff states that if the present application is allowed, it will enable him to serve the public again as an advocate and solicitor and that he will be able to be a useful citizen to the public.

[38] Repentance and remorse have no relationship with the action taken by the plaintiff in the 2017 suit. An appeal against the decision of the Disciplinary Board is a right given by the law to the aggrieved advocate and solicitor against the order made by the Disciplinary Board. The plaintiff cannot be punished for exercising such rights made available under the law.

[39] It is sufficient for the plaintiff to be seen as committed to personal change and resolved to live a more responsible and humane life. He had accepted the punishment and had not appealed against the decision of the Disciplinary Board. He had dismantled his legal practice wilfully. In addition, the plaintiff had suffered financial loss and shame for 32 years. It cannot be disputed that during the long lapse of time, he had led a blameless life since his suspension in 1989 until now.

[40] The plaintiff has also settled his debt and was discharged from bankruptcy on 24 February 2017. In *Khong Jin Teong v. Majlis Peguam Malaysia* [2015] 2 CLJ 1109 the court was of the view that the efforts and determination of the plaintiff in settling his debts was commendable and took that fact as a consideration in restoring the plaintiff to the Roll. The court stated:

> (v) Despite the RO & AO having been made against him by his former firm the plaintiff had worked hard and through sheer determination and perseverance he managed to put himself out of the financial difficulties and obtained the orders to annul the RO & AO made against him. This is commendable as many bankrupts out there are not able to be discharged from their bankruptcy status and sadly some of them even die as bankrupts.

[41] Further, it cannot be disputed that the complaint 1 lodged by the complainant has been resolved in that the plaintiff had issued the receipt to the complainant. The complainant for that matter did not proceed any further with their complaint. There is no question of restitution as the plaintiff did not misappropriate the complainant's money and no report has been lodged as to that effect. The complainant's letter dated 31 March 1987 to the KBC relates only to the plaintiff's delay in responding/replying to their letter relating to the amicable settlement between the complainant's client ie, the bank and the plaintiff's client.

[42] The plaintiff had taken care of his personal behaviour and conduct in society with no criminal or civil charges or claims brought against him during the period despite the difficulties in life that he had to undergo due to his inability to practice the profession of his choice. It could hardly be said that a man of 67 years old is not remorseful for his misdeeds. After 32 years of being punished, the plaintiff could not be expected to wait another ten or 20 more years to undergo 'rehabilitation' to be considered as a fit and proper person to practice law. 32 years is more than sufficient to rehabilitate a person who had failed to issue an official receipt.

[43] In the case of *Patrick Samuel Joseph Sebastian v. Majlis Peguam Malaysia* [2013] 1 LNS 1170; [2014] 9 MLJ 479, the High Court found that the application for restoration to the Roll filed almost ten years after the applicant therein has ceased practised and three years after he was struck off the Roll was sufficient for him to be readmitted and resumed practice. Hasnah Mohammed Hashim J (as Her Ladyship then was) stated as follows:

> [22] Based on the facts before us the applicant had in fact ceased practice in 2003 and the disciplinary committee only struck him off the Roll in 2010, seven years after the complaint was lodged. The application was filed almost ten years after the applicant has ceased practising. Furthermore the facts of the case also show that the applicant is remorseful, repentant and penitent over the incidence. He has paid all the fines due and he is also keen to pay the monies owing to the complainant. There is no time frame stipulated under s. 107 of the LPA before a disbarred member can be restored to the Roll. In this particular case therefore it is not too early to consider whether he is a fit and proper person to resume practice as there is a lapse of ten years since he ceased practice and three years after he was struck off the Roll.

[44] In *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* (*supra*) the Federal Court had stated that it was grossly unfair and unreasonable for the appellant to be made to endure the long wait before he filed again for reinstatement to the Roll.

[45] In *Khong Jin Teong v. Majlis Peguam Malaysia* (*supra*), two complaints were lodged against the plaintiff, an advocate and solicitor, to the Disciplinary Board by two clients alleging that the plaintiff had misappropriated a retention sum of RM2,500 for real property gain tax and that he had failed to return a stakeholder sum of RM44,000 respectively. The plaintiff did not attend the Disciplinary Board hearing but instead sent a letter to the Disciplinary Board, admitting to the complaints and reiterating that he was responsible for the complaints. The plaintiff paid the respective sums to the complainants and the complainants withdrew their complaints against the plaintiff. Despite these withdrawals, the Bar Council intervened into the complaints pursuant to r. 8 of Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 by filing formal complaints with the Disciplinary Board. The Disciplinary Committee found the plaintiff guilty of both complaints and recommended that the plaintiff be struck off the Roll of Advocates and Solicitors of the High Court. Accordingly, the plaintiff was struck off the Roll. The plaintiff filed the application to be restored to the roll pursuant to s. 107 LPA. The High Court through the judgment of Asmabi Mohamad J (as she then was) held:

(vii) As I had illustrated above it is not the intention of the LPA to impose a permanent sanction on the plaintiff and prevent him from returning to his profession, the one and only trade he knew to make a living for himself as well as his family members. That was the precise reason s. 107 of the LPA was enacted to offer a second chance to an advocate and solicitor who had turned over a new leaf. Further on the factual matrix of this case there was a lapse of ten years from the time the order to remove him from the Roll was made to the time he submitted his application for reinstatement under s. 107 of the LPA. The plaintiff had suffered long enough economically, professionally, spiritually and socially. This too, ought to be considered by this court.

(viii) In the case of *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* (*supra*) the Federal Court held that the court ought to examine the trend and pattern of sentences imposed by other courts as a guide to decide whether to restore the plaintiff to the roll. The Federal Court had also held that it is grossly unfair and unreasonable for the applicant to be left in a limbo and to endure the long wait before he could be reinstated. The law too does not envisage that an advocate and solicitor who had been struck off the roll must be totally barred from returning to the profession.

[46] In *Teoh Hooi Leong v. Bar Council* (*supra*) the Supreme Court had stated that:

[2] The lapse of time since the conviction is a material consideration and if an advocate and solicitor lives a blameless life and there is evidence of rehabilitation and there are members of the profession who can vouch to this change, that may overcome the initial misconduct.

[3] In this case, there is no evidence that T has committed any irregularity during the last 14 years and the lapse of 14 years from the date of breach to the date of application for readmission was a factor in T's favour.

[47] Premised on the authorities cited in the above, this court is of the considered view that the plaintiff should not be treated differently as he has served a longer period of punishment compared to the appellant/applicant/plaintiff in the cases cited in the above.

[48] This court is also satisfied that the plaintiff has demonstrated that he is still very much in touch with the law. He is very able in arguing his case before this court and had apply the law correctly. It can clearly be seen that he has been keeping himself updated with the development of the law.

[49] The plaintiff has averred that from 2017 he had represented six parties in their claims at the Kuala Lumpur Regional Centre for Arbitration ("KLRCA") as he was allowed to pursuant to s. 38 LPA. He had succeeded in obtaining the awards in favour of the parties that he represented. As such it cannot be gainsaid that his disbarment had caused him to be lost in touch with the law. In *Chan Chow Wang v. Malaysian Bar* [1986] 1 LNS 94; [1986]

A 2 MLJ 159, the plaintiff therein was struck off the Roll of Advocates and Solicitors by the High Court of Singapore but he had been practising for a period of four years in Malaysia and was found to have observed the ethics of the profession and that he has suffered professionally, socially and economically and is truly repentant. The court was satisfied that it was fair
B and reasonable to re-admit the plaintiff to the Bar of Malaya.

[50] Taking into account that the plaintiff herein has been practising at the KLRCA without any complaint from his clients and the fact that he represented himself all the way to the Federal Court in the 2017 suit, it is of the considered view that the plaintiff is a fit and proper person to be re-
C admitted to the Roll and to be able to practice again.

Conclusion

[51] On a full consideration of the facts and circumstances of this case, this court is satisfied that it is fair and reasonable to re-admit and restored the
D plaintiff to the Roll of Advocates and Solicitors pursuant to s. 107 LPA. The plaintiff's application was therefore allowed.

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